



In the Matter of:

DOUGLAS FRECHIN,

CASE NO. 96-STA-9

COMPLAINANT,

DATE: August 9, 1996

v.

YELLOW FREIGHT SYSTEM, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD^{1/}

FINAL DECISION AND ORDER

The Administrative Law Judge (ALJ) submitted a Recommended Decision and Order (R. D. & O.) in this case arising under the employee protection provisions of the Surface Transportation Assistance Act of 1982, as amended, 49 U.S.C. § 31105 (West 1996) (STAA), recommending that the complaint be dismissed. Complainant Douglas Frechin alleged that Yellow Freight System, Inc. assigned him to drive a "straight" truck, after he had driven a tractor-trailer for a number of years, in retaliation for complaining about a defective brake line in one trailer. R. D. & O. at 3. Frechin alleged that driving a straight truck was less desirable work because it involves making deliveries in downtown Seattle, where driving and parking are difficult, requires more manual lifting than driving a tractor-trailer, and offers less opportunity for overtime. *Id.* Yellow Freight denied it assigned Frechin a straight truck in retaliation for engaging in protected activity. Yellow Freight asserts that Frechin was given this assignment because he regularly had trouble operating the roll-up doors on the trailers, while the straight truck had a different type of door which he could operate without difficulty, and because he had made numerous requests not to work overtime. *Id.* In

^{1/} On April 17, 1996, a Secretary's Order was signed delegating authority to issue final agency decisions under this statute and the implementing regulations (29 C.F.R. Part 1978) to the newly created Administrative Review Board. Secretary's Order 2-96 (Apr. 17, 1996), 61 Fed. Reg. 19978 (May 3, 1996) (copy attached).

Secretary's Order 2-96 contains a comprehensive list of the statutes, executive orders, and regulations under which the Administrative Review Board now issues final agency decisions. A copy of the final procedural revisions to the regulations (61 Fed. Reg. 19982) implementing this reorganization is also attached.

addition, Yellow Freight managers testified they made the decision to reassign Frechin before he made his safety complaint.

The ALJ reviewed the record and found that Yellow Freight reassigned Frechin for legitimate business reasons. The assignment gave him a truck door that he could operate without difficulty. Further, Frechin's requests to be off on time and not be assigned overtime was more easily accommodated by driving a straight truck. The reassignment also dovetailed with the Seattle terminal's effort to reduce overtime. R. D. & O. at 6. In addition, the ALJ found that since the Complainant was satisfied with driving the straight truck for over two months, that assignment was not retaliatory. *Id.* Finally, the ALJ found that Yellow Freight would have assigned Frechin to a straight truck, even if he had not made a safety complaint, because it made that decision before he engaged in any protected activity. *Id.*

The record in this case has been reviewed and we find that it fully supports the ALJ's recommended decision. *See* attached. Accordingly, we adopt the recommendation that the complaint in this case be DISMISSED.

SO ORDERED.

DAVID A. O'BRIEN
Chair

KARL J. SANDSTROM
Member